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PATENT

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Date: October 31, 2002

James W. Jakobsen, Reg. No. 38,505

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:	)
	)
Denis KHOO, et al.	) Examiner: (To Be Assigned)
	)
Serial No.: 09/625,832	) Group Art Unit: 2761
	)
Filed: July 26, 2000	)

For: **METHOD AND SYSTEM FOR ORDERING AN ADVERTISING SPOT OVER A DATA NETWORK**

Commissioner of Patents
Washington, D.C. 20231

PETITION TO MAKE SPECIAL UNDER 37 C.F.R. § 1.102(d)

Dear Sir/Madam:

Applicants hereby petition pursuant to M.P.E.P. § 708.02(VIII) to make the above-identified patent application special. If it is determined that the pending claims are not directed to a single invention, Applicants will make an election without traverse as required under M.P.E.P. § 708.02(VIII)(B). The petition fee as set forth in 37 C.F.R. § 1.17(h) is filed herewith. The Commissioner is authorized to charge any additional fees required or credit any overpayments to Deposit Account No. 03-3975. A copy of this petition is included for this purpose.

I.   CITATION OF REFERENCES

Applicants submit that a pre-examination search for prior art deemed most closely related to the subject matter encompassed by the pending claims was made by a professional searcher in the following classes/subclasses:

Class 725, subclasses 5, 8, 9, 32, 34, and 35.

A list of patents found during the pre-examination search, patents cited in related patent application no. 09/487,120, which is now now issued as U.S. Patent No. 6,434,747, and patents cited in a related International Search Report are provided below.

U.S. PATENT/APPLICATION NO.	INVENTOR(S)
2002/0083444[1]	Blasko, at al.
5,621,456[2]	Florin, et al.
5,745,710[2]	Clanton, et al.
5,758,259[2,3]	Lawler
5,848,396[2,3]	Gerace
5,848,397[2,3]	Marsh, et al.
5,861,881[2]	Freeman, et al.
6,088,722[2]	Herz, et al.
6,177,931[2,3]	Alexander, et al.
6,211,901[2]	Imajima, et al.
6,324,519[1]	Eldering

[1] Patent found during the pre-examination search.

[2] Patent cited in related patent application no. 09/487,120, which is now issued as U.S. Patent No. 6,434,747.

[3] Patent cited in an International Search Report of related international patent application no. PCT/US01/01115. The Search Report is also enclosed for Examiner's review.

Enclosed herewith are an Information Disclosure Statement and Form PTO-1449 for the patents above-listed and a copy of each reference cited in the Form PTO-1449.

II.   DETAILED DISCUSSION OF THE CITED REFERENCES

U.S. Patent Application Publication No. 2002/0083444 to Blasko, at al.

Blasko, et al. ("Blasko") disclose a computer interface between an advertiser and a communications network operation, such as a cable TV network operator. The interface is an avail ("advertising spot") management system for automatically managing avail inventory data and avail pricing for the network wherein avails, are automatically managed and priced. The system may execute a series of computer programs to interact with the advertiser and to provide various analyses to the advertiser regarding advertising opportunities with the network.

U.S. Patent No. 5,621,456 to Florin, et al.

Florin, et al. ("Florin") disclose a method and apparatus using an audio-visual interface for the display of multiple program categories. An interactive audio-visual (A/V) transceiver is coupled to a television or telephone (T/T) cable, a TV, a video recorder (VCR), and other A/V devices. The A/V transceiver switches data between a program/service provider and the connected A/V devices. A remote control device is provided for communicating with the transceiver, and includes a number of user selectable interactive functions such as: an info button, a list button, a categories button, a pix button, a mark button, a jump button, a select button, and a pointing device (up, down, left, and right arrow buttons).

While viewing the TV, a user may obtain additional information on a current program by depressing the info button, and obtaining more detailed information using the pointing device. By depressing the list button, the transceiver displays a program listing of the current programs available for viewing. Through the use of the pointing device, viewers can scroll up and down the program listing or view a highlighted program in full screen by pressing the select button.

By pushing the right or left arrow buttons on the pointing device, program listings may also be viewed for different hours, days and up to several weeks in advance. The depression of the categories button results in the display of a categories menu bar on the TV screen, which includes categories such as "all," "sports," "news," and "favorites". The depression of the pix button results in the display of a "visual menu" of multiple picture-in-picture (PIP) windows along the perimeter of the TV screen. Depression of the mark button allows users to "bookmark" a particular program for later viewing and depression of the jump button allows a user to jump between previously marked programs.

U.S. Patent No. 5,745,710 to Clanton, et al.

Clanton, et al. ("Clanton") disclose a graphical user interface for displaying and selecting video programs, such as video on demand, and includes a video on demand server coupled to a communication medium. A plurality of set-top box receivers are coupled to the communication medium for receiving digitized programming in the form of movies and the like from the video on demand server. The set-top box includes a central processing unit (CPU) coupled to a memory and other electronic modules. The CPU generates and displays a graphical user interface on the subscriber's television (TV). The graphical user interface is based upon a metaphor in which a world of spaces are organized as part of a studio back lot through which a user may navigate. The back lot includes a poster wall which presents to the user a series of movie posters representing available selections. When a user touches a poster on a touch sensitive screen of the TV, the CPU generates an animation which displays the poster coming off of the wall and appearing in the foreground of the screen. If a subscriber selects the poster to view a feature presentation, the video on the demand server downloads the selected video which is displayed on the TV.

U.S. Patent No. 5,758,259 to Lawler

Lawler discloses an automated selective programming guide for identifying for a selected viewer a preferred program available from an interactive television or televideo (IT) system at a selected time. The preferred program and criteria for identifying the preferred program are selected automatically. As a result, the method of identifying the preferred programming is

transparent to, and requires no explicit selection by, the viewer. In operation, the IT system identifies particular characteristics of programming delivered to the selected viewer. With reference to a motion picture, for example, the particular characteristics could include the names of the director, leading actors, and the genre of the motion picture. The IT system establishes for each viewer a database or table of viewer preferences representing the particular characteristics of programming previously delivered (i.e., a viewing history for the viewer). Whenever a viewer requests a listing of preferred programming for a selected time, the IT system compares the particular characteristics in the viewer preference table to the predetermined characteristics of programming available at the selected time. The IT system determines for the programming available at the selected time degrees of correlation to the predetermined characteristics in the viewer preference table. The programming available at the selected time having the greatest degree of correlation is identified as the preferred program.

U.S. Patent No. 5,848,396 to Gerace

Gerace discloses a method and apparatus for determining a behavioral profile of a computer user. The invention uses "agate" information to determine the profile of a computer user and, in particular, the behavioral or psychographic profile, as distinguished from the demographic profile, of a user. The term agate is used to refer to time-sensitive, reference information that is not read linearly. Examples are telephone listings, classified ads, weather reports, sports scores and statistics, market data, books and recordings in print, and television and film listings. To determine the profile of a computer user, the invention provides (i) a data assembly for displaying customized agate information to a computer user, and (ii) a tracking and profiling member for recording user activity with respect to agate information displayed through the data assembly. Over time, the tracking and profiling member holds a history and/or pattern of user activity which in turn is interpreted as a user's habits and/or preferences. To that end, a psychographic profile is inferred from the recorded activities in the tracking and profiling member.

U.S. Patent No. 5,848,397 to Marsh, et al.

Marsh, et al. ("Marsh") disclose a method for scheduling the presentation of messages to computer users. An advertisement display scheduler resident on a user's computer receives advertisements from a server system over a network. Upon receipt, the advertisement display scheduler determines the priority of the advertisement and assigns it to one of a plurality of prioritized advertisement queues. Each queue is sorted according to predetermined scheduling criteria so that advertisements deemed "more important" are presented to a user first. The advertisement display scheduler logs statistical information relating to the presentation of advertisements for use in updating the scheduling criteria, and makes such statistical information available to the server system.

U.S. Patent No. 5,861,881 to Freeman, et al.

Freeman, et al. ("Freeman") disclose an interactive computer system which may operate on a computer network. Subscribers interact with a fully interactive program through the use of input devices and a personal computer or a television. The multiple video/audio data streams may be received from a broadcast transmission source or may be resident in local or external storage. In response to user inputs, a personalized graphics, video and/or audio presentation is provided to the user either immediately or at a later time. If not presented immediately, the interactive computer system utilizes "trigger points" to determine when to enable multiple multimedia segments during the show. The CPU uses embedded or stored authoring commands for integrating the various multimedia elements. The interactive multimedia computer enables flicker-free switching from one signal to another on the same or different channels.

U.S. Patent No. 6,088,722 to Herz, et al.

Herz, et al. ("Herz") disclose a system and method for scheduling the receipt of desired movies and other forms of data from a network, which simultaneously distributes many sources of such data to many customers, as in a cable television system. Customer profiles are developed for the recipient describing how important certain characteristics of the broadcast video program, movie, or other data are to each customer. From these profiles, an "agreement matrix" is calculated by comparing the recipient's profiles to the actual profiles of the characteristics of the

available video programs, movies, or other data. The agreement matrix thus characterizes the attractiveness of each video program, movie, or other data to each prospective customer. "Virtual" channels are generated from the agreement matrix to produce a series of video or data programming which will provide the greatest satisfaction to each customer. Feedback paths are also provided so that the customer's profiles and/or the profiles of the video programs or other data may be modified to reflect actual usage, and so that the data downloaded to the customer's set top terminal may be minimized.

U.S. Patent No. 6,177,931 to Alexander, et al.

Alexander, et al. ("Alexander") disclose an embodiment of an interactive television system including a means for receiving a television signal that carries a plurality of channels of video programs and a display for displaying the video programs, graphics and other viewable information. The system further includes a means for selecting one of the channels carried by the television signal for display of a video program on the display monitor. Multiple types of data are stored and accessible from a memory, including a data base of television scheduling data and a data base of advertising information. A means is provided for collecting viewer profile data and for selecting a portion of the advertising information based on the view profile data. A means is further provided for simultaneously formatting and displaying the television video program, the television scheduling data as an on screen electronic television program guide, and the selected portion of the advertising information on the display monitor. One of the displayed program titles from display of the on screen electronic television program guide may be selected for display on the display monitor.

U.S. Patent No. 6,211,901 to Imajima, et al.

Imajima, et al. ("Imajima") disclose a video data distributing device by video on demand (VOD), wherein a requested title recognizing mechanism recognizes the title of a video requested by a subscriber. A VOD service state monitoring mechanism determines whether or not the broadcast of the video is to be provided in the full video on demand (FVOD) or the near video on demand (NVOD) service, and if there is any available channel for the broadcast. If the broadcast has not been switched from the FVOD service to the NVOD service, then a busy state monitoring mechanism checks the number of the current simultaneous subscribers for the video.

If the number is equal to or larger than a threshold, then the busy state monitoring mechanism instructs an NVOD service providing mechanism to broadcast the requested video in the NVOD service. If the number is smaller than the threshold, then the busy state monitoring mechanism instructs an FVOD service providing mechanism to broadcast the requested video in the FVOD service.

U.S. Patent No. 6,324,519 to Eldering

Eldering discloses an advertisement auction system which can match advertisements with consumers and allow the entity who can present the advertisement to the consumer to maximize their income. The invention provides a means for the auctioning of advertisement opportunities based on the correlation of an advertisement with a consumer profile, with notification of an advertising opportunity being presented to at least one advertiser. The advertiser transmits an advertisement characterization, which is used to determine the appropriateness of the advertisement, to one or more consumers. The results of this determination, in the form of a correlation factor, is transmitted to the advertiser who can subsequently place a bid for the advertisement opportunity. Upon acceptance of the bid the advertisement is delivered to the content/opportunity provider who delivers the ad to the consumer.

III.   DISCLOSURE IN THE KHOO APPLICATION

The Khoo application discloses a method for ordering an advertising spot for an advertisement over a data network. The advertiser is an entity that desires to place advertising content (e.g., commercials or other type of action calling attention to the public of the advertiser through paid announcements) to the target user. In order to get the advertisement to the target user, the advertiser goes to a broadcaster that is able to transmit the advertisement to the target user as part of a motion picture incorporating or otherwise transmitting the advertising spot with the motion picture. The advertisement may be sent either directly or indirectly from the advertiser to the broadcaster through intermediary entities.

The advertiser has predetermined constraints that are determined by the advertiser in a variety of ways. The predetermined constraints are any information regarding the target user that the advertiser desires to view the advertisement. This includes, without limitation, information

such as name, age, income, address, hobbies, hours of television watched per day, profession, gender, and any other type of information of a target user that is suitable for purposes of marketing content, including advertisement, to the target user. The predetermined constraints typically are determined by the advertiser based on research of its products or services being offered in order to reach the target user.

The predetermined constraints may be sent through a data network, for example, the Internet, or other network that exchanges data. The data network, in turn, sends the predetermined constraint, defining the target user that will receive the advertisement, to the broadcaster in order to determine a price for the advertising spot that will be shown to the target user. Upon receiving the predetermined constraint, the broadcaster uses the predetermined constraint to determine the price by performing a method for determining a price for the advertising spot as described in detail below. The broadcaster, after having the price for the advertising spot, offers that price to the advertiser by returning the price through the data network to the advertiser. The advertiser then orders the advertising spot for the advertisement based on the price by sending to the broadcaster, through the data network, an order for the advertising spot. The advertising spot is then transmitted to the target user during the transmission of a motion picture. The target user is any individual viewing the motion picture.

The broadcaster determines the price for the advertising spot by searching an individual inventory that is a database containing a plurality of individuals. The plurality of individuals each have a profile that generally describes the individual, much in a similar manner as the predetermined constraints. That is, the profile contains information such as age, gender, income, hobbies, and other information that generally describe each individual in the individual inventory. The broadcaster searches the individual inventory comparing the profile to the predetermined constraints in order to make a match between the two. The broadcaster, by searching and comparing the predetermined constraints to the profile of the individual inventory, is able to match the predetermined constraint to the individual having the profile described in order to select that individual. Once that individual is selected, the broadcaster determines a cost for that individual based on a predetermined formula described herein below. Each individual is then

totaled to determine the price to send over the data network to the advertiser as the price for placing the advertisement in the motion picture.

An embodiment of a predetermined formula determines the cost per individual based on two criteria: index value and coefficients (i.e., $f_1(x) = ax_1 + bx_2 + cx_3 + dx_4$). It is important to note that the predetermined formula described is only one embodiment of the type of predetermined formulas that may be used to determine the cost per individual in the individual inventory. In essence, the predetermined formula may be any formula that determines the demand on the individuals in the individual inventory. This demand may be based on the supply and demand of the specific individuals contained in the individual inventory, as well as the supply and demand from the advertiser.

In the present disclosure the index values are first inserted for x_1, x_2, x_3, and x_4. These index values are determined by the relative importance of the individual in the individual inventory to the broadcaster. That is, the individual in the individual inventory may have a higher or lower index value based on the demand for an individual by the broadcaster with certain demographics in higher demand. The demand for an individual from the advertiser creates a weighted significance upon which the predetermined formula is based. The weighted significance is defined as the amount of significance given to the coefficient values that is in turn based on the target individual's demand. In one embodiment, that demand may be based on the amount of time available for the target individual to receive an advertisement. Thus, many advertisers may want to advertise to the individual which would raise the demand for the individual and lower the time available to the individual. Then, the coefficient values for age, income, sex (i.e., a, b, c, d) are inserted, added and the formula produces a price for that individual. The coefficient values are based on the demand for the individual from the advertiser's perspective. Then, all the prices for the specific individual matched are added to determine the total price for the advertising spot.

IV.   CLAIMS IN THE KHOO APPLICATION

An aspect of the invention disclosed in the Khoo application concerns providing for ordering an advertising spot over a data network. Independent Claims 1, 7, 8, 9, 10, 11, and 17

of the application cover forms (e.g., methods, systems, computer readable mediums) of this aspect of the invention. Dependent Claims 2 – 6, and 12 – 16 depend directly or indirectly from Claims 1 and 11, respectively, and cover further details of this aspect of the invention. Representative of this aspect of the invention is method Claim 1, which claims a method for ordering an advertising spot for an advertisement over a data network to be transmitted to a target user during a transmission of a motion picture including the steps of providing, by an advertiser to a broadcaster, a predetermined constraint defining the target user for receiving the advertisement; using, by the broadcaster, the predetermined constraint to determine a price for the advertising spot; offering, by the broadcaster to the advertiser, the advertising spot at the price; and ordering, by the advertiser, the advertising spot based on the price to place the advertisement in the advertising spot to be transmitted to the target user during the transmission of the motion picture.

V.   DISTINCTIONS BETWEEN THE CLAIMS IN THE KHOO APPLICATION AND THE CITED REFERENCES

Blasko, Florin, Clanton, Lawler, Gerace, Marsh, Freeman, Herz, Alexander, Imajima, and Eldering fail to disclose the use of predetermined constraints defining target users and determinations of price for the spot based the predetermined constraints as claimed in independent Claims 1, 7, 8, 9, 10, 11, and 17, and claims that depend therefrom. The independent claims provide for a method for ordering an advertising spot for an advertisement over a data network to be transmitted to a target user during a transmission of a motion picture including the steps of providing, by an advertiser to a broadcaster, a predetermined constraint defining the target user for receiving the advertisement; using, by the broadcaster, the predetermined constraint to determine a price for the advertising spot; offering, by the broadcaster to the advertiser, the advertising spot at the price; and ordering, by the advertiser, the advertising spot based on the price to place the advertisement in the advertising spot to be transmitted to the target user during the transmission of the motion picture. Therefore, the Khoo application claims subject matter which is not disclosed, taught or suggested by the foregoing references and is patentable in light thereof.

VI. CONCLUSION

It is respectfully submitted that this Petition, in conjunction with the attachments and enclosures identified above, are sufficient to comply with the requirements of 37 C.F.R. § 1.102(d) and, more specifically, with the provisions set forth in M.P.E.P. § 708.02(VIII).

Accordingly, Applicants respectfully request that this Petition be granted and that the above-referenced application be advanced out of turn for examination. Applicants further request an early and favorable action on the merits.

Respectfully submitted,
PILLSBURY WINTHROP LLP
Attorneys for Applicants

By: _____

James W. Jakobsen, Reg. No. 38,505
1600 Tysons Boulevard
McLean, VA 22102
Tel.: 203-965-8271
Fax: 203-965-8226